

*The following text of the "Military Service Act 1917" (Chapter 19 Statutes of Canada) is based on information from a number of sources. I have found no complete authoritative copy of this Act and many reproductions have typographical and spelling errors – many of which were based on the use of American spelling and grammar when conversions from English (Canadian) format were undertaken. I have ordered the complete collection on the MSA 1917 from Library and Archives Canada and I will update this page if and when that material arrives via Inter Library Loan.*

*Richard Laughton, Milton Ontario Canada: [cefmatrix@gmail.com](mailto:cefmatrix@gmail.com)*

## **7-8 GEORGE V.**

### **CHAP. 19.**

#### **An Act respecting Military Service.**

*[Assented to 29th August, 1917]*

**W**HEREAS by section ten of the Militia Act, chapter forty-one of the Revised Statutes of Canada, 1906, it is enacted as follows:-

"All the male inhabitants of Canada, of the age of eighteen years and upwards, and under sixty, not exempt or disqualified by law, and being British subjects, shall be liable to service in the Militia: Provided that the Governor General may require all the male inhabitants of Canada, capable of bearing arms, to serve in the case of a *levee en masse*;"

And whereas by section sixty-nine of the said Act it is further enacted as follows:-

"The Governor in Council may place the Militia, or any part thereof, on active service anywhere in Canada, and also beyond Canada, for the defence thereof, at any time when it appears advisable so to do by reason of emergency;"

And whereas by the said Act it is further enacted that, if at any time enough men do not volunteer to complete the quota required, the men so liable to serve shall be drafted by ballot;

And whereas to maintain and support the Canadian Expeditionary Force now engaged in active service overseas for the defence and security of Canada, the preservation of the Empire and of human liberty, it is necessary to provide reinforcements for such Expeditionary Force;

And whereas enough men do not volunteer to provide such reinforcements;

And whereas by reason of the large number of men who have already left agricultural and industrial pursuits in Canada to join such Expeditionary Force as volunteers, and

of the necessity of sustaining under such conditions the productivity of the Dominion, it is expedient to secure the men still required, not by ballot as provided in the Militia Act, but by selective draft: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:-

1. (1) This Act may be cited as The Military Service Act, 1917.

(2) In this Act, unless the context otherwise requires,-

"Certificate" means a certificate of exemption from military service under this Act;

"The Militia Act" means the Militia Act and all regulations and orders made under the authority thereof;

"The Army Act" means the Army Act for the time being in force in the United Kingdom and all regulations and orders made under the authority thereof;

"Regulations" means regulations made by the Governor in Council under the authority of this Act and directions made under such regulations;

"Minister" means the Minister of Justice;

"Tribunal" means a tribunal constituted under this Act.

2. (1) Every male British subject who comes within one of the classes described in section three of this Act, and who,-

(a) is ordinarily resident in Canada; or,

(b) has been at any time since the fourth day of August, 1914, resident in Canada, shall be liable to be called out as hereinafter provided on active service in the Canadian Expeditionary Force for the defence of Canada, either in or beyond Canada, unless he

(c) comes within the exceptions set out in the Schedule; or,

(d) reaches the age of forty-five before the class or subclass to which he belongs, as described in section three, is called out.

Such service shall be for the duration of the present war and of demobilization after the conclusion of the war.

(2) Nothing in this Act shall prevent any man from voluntarily enlisting in the Canadian Expeditionary Force, so long as voluntary enlistment in such Force is authorized.

3. (1) The men who are liable to be called out shall consist of six classes described as follows:-

Class 1- Those who have attained the age of twenty years and were born not earlier than the year 1883 and are unmarried, or are widowers but have no child.

Class 2- Those who have attained the age of twenty years and were born not earlier than the year 1883 and are married, or are widowers who have a child or children.

Class 3- Those who were born in the years 1876 to 1882, both inclusive, and are unmarried, or are widowers who have no child.

Class 4- Those who were born in the years 1876 to 1882, both inclusive, and are married, or are widowers who have a child or children.

Class 5- Those who were born in the years 1872 to 1875, both inclusive, and are unmarried, or are widowers who have no child.

Class 6- Those who were born in the years 1872 to 1875, both inclusive, and are married, or are widowers who have a child or children.

(2) For the purposes of this section, any man married after the sixth day of July, 1917, shall be deemed to be unmarried.

(3) Any class, except Class 1, shall include men who are transferred thereto from another class as hereinafter provided, and men who have come within Class 1 since the previous class was called out.

(4) The order in which the classes are described in this section shall be the order in which they may be called out on active service, provided that Governor in Council may divide any class into subclasses, in which case the subclasses shall be called out in order of age beginning with the youngest.

4. (1) The Governor in Council may from time to time by proclamation call out on active service as aforesaid for the defence of Canada, either in Canada or beyond Canada, any class or subclass of men described in section three, and all men within the class or subclass so called out shall, from the date of such proclamation, be deemed to be soldiers enlisted in the Military Forces of Canada and subject to military law for the duration of the present war, and of demobilization thereafter, save as hereinafter provided.

(2) Men so called out shall report, and shall be placed on active service in the Canadian Expeditionary Force as may be set out in such proclamation or in

regulations, but until so placed on active service, shall be deemed to be on leave of absence without pay.

(3) Any man by or in respect of whom an application for exemption is made as hereinafter provided, shall, so long as such application or any appeal in connection therewith is pending and during the currency of any exemption granted him, be deemed to be on leave of absence without pay.

(4) Any man who is called out and who, without reasonable excuse, fails to report as aforesaid, shall be guilty of an offence, and shall be liable on summary conviction to imprisonment for any term not exceeding five years, with hard labour.

5. (1) There shall be established in the manner hereinafter set out, the following tribunals:-

(a) Local Tribunals;

(b) Appeal Tribunals;

(c) A Central Appeal Judge.

(2) Any tribunal may hear evidence on oath or otherwise as it may deem expedient, and for the performance of its duties shall have all the powers vested in a Commissioner under Part I of the Inquiries Act.

(3) The Governor in Council may, upon the recommendation of the Central Appeal Judge, make regulations with respect to the establishment, constitution, functions and procedure of the said tribunals and such regulations may contain provisions for securing uniformity in the application of this Act.

(4) In so far as provision is not otherwise made, the procedure of the Tribunal shall be such as is determined by the Tribunal.

(5) No member of any tribunal shall be responsible at law for anything done by him in good faith in the performance of his duties under this Act, and no action shall be taken against any member of a local tribunal or an appeal tribunal in respect of the performance or non-performance of his duties under this Act, except with the written consent of the Central Appeal Judge.

(6) No proceeding authorized or pending before any tribunal, and no decision of any tribunal, shall be means of an injunction, prohibition, mandamus, certiorari, habeas corpus, or other process, whether of the like kind or otherwise issuing out of any court, be enjoined, restrained, stayed, removed or subjected to review or consideration, upon any ground whether arising out of alleged absence of jurisdiction in the tribunal, nullity, defect or irregularity of the proceedings or any other cause whatsoever nor shall any

such proceeding or decision be questioned, reviewed or considered collaterally in any action or proceeding civil or criminal.

## LOCAL TRIBUNALS

6. (1) The Minister may from time to time, by proclamation or otherwise, establish local tribunals at such places as he deems necessary, and give each an appropriate designation.

(2) The Minister may, after a local tribunal is established, order, by proclamation or otherwise, the removal of such local tribunal from place to place within the same province.

(3) Each local tribunal shall consist of two members. One member shall be appointed by a Board of Selection to be established by joint resolution of the Senate and House of Commons; the other member shall be appointed by the following authority:-

- I. In those provinces in which there are county courts or district courts, the county court judge or district court judge, or, if more than one, the senior judge for the county or district in which the local tribunal is established, or when the place at which a local tribunal is to be established is not within the territorial limits of any county court or district court, then by such judge as may be determined by the Minister.

The judge making the appointment may appoint himself or any other judge having jurisdiction in the county or district.

For the purposes of this section, "county court judge" or "district court judge" includes any deputy judge authorized by law to act for the time being for any such judge, also includes any acting judge so authorized.

- II. In the province of Quebec:-

- (a) In the judicial districts of Montreal and Quebec, any judge of the Superior Court of the province of Quebec who is authorized by the Chief Justice of the said Court or authorized by the judge appointed to perform the duties of Chief Justice in the judicial district.
- (b) In the other judicial districts the judge of the Superior Court of the province of Quebec assigned to the judicial district within which the local tribunal is established.

III. In the Yukon Territory:-

The judge of the Territorial Court or the person appointed under the provisions of the Yukon Act to act in place of such judge; and

IV. In the Northwest Territories:-

The Commissioner of the Royal Northwest Mounted Police.

(4)

- (a) The names and addresses of all persons appointed on local tribunal shall, as may be provided by regulations, be communicated to the Minister.
- (b) The Minister may by telegraph or otherwise appoint one or both members, as the case maybe, of any local tribunal, if he has not received, within such period before the tribunal is to sit as may be fixed by regulation, the names and addresses of members duly appointed.
- (c) A vacancy occurring shall be filled by the authority who appointed the member vacating, and if not so filled or if communication of same as aforesaid has not been received by the Minister within such period before the tribunal is to sit as may be fixed by regulation, the Minister may fill such vacancy.

(5) Each member of a local tribunal shall, unless he be a judge, make oath or affirmation that he will faithfully and impartially perform his duties as such member. Such oath or affirmation may be made before a judge, a justice of the peace, a commissioner for taking affidavits, or before such other person as in any special case the Minister may direct.

(6) Any person duly appointed a member of a local tribunal shall, unless relieved in writing by the authority appointing him, perform his duties as such member, and any person who without reasonable excuse fails so to do shall be guilty of an offence and liable on summary conviction to imprisonment for any term not exceeding two years and not less than three months.

(7) Each local tribunal shall hear and decide applications for certificates of exemption made to such tribunal as provided in section eleven.

## APPEAL TRIBUNALS

7. (1) The Chief Justice of the court of last resort in each province, or in case of his absence, or failure to act, then, judge of that court designated by the Minister, shall establish for such province a sufficient number of Appeal Tribunals, and shall assign to each such tribunal in the province of Quebec on judge of the court of King's Bench or

Superior Court of said province, and shall distribute among such tribunals all appeals from, and cases stated under subsection two of section ten by local tribunals of which the Registrar has notice, and such Appeal Tribunals shall severally hear and decide the same: Provided that appeals from a local tribunal on which sits one or more judges shall be heard and decided by an appeal tribunal constituted of a judge of a higher court.

(2) The Judge of the Territorial Court, or the person appointed in the place of the said judge under the provisions of the Yukon Act, shall constitute the Appeal Tribunal for the Yukon Territory.

## FINAL TRIBUNAL

8. The Governor in Council may appoint one of the judges of the Supreme Court of Canada to be the Central Appeal Judge.

## REGISTRARS

9. A Registrar for each Province may be appointed by the Governor in Council.

10. (1) Any person aggrieved by the decision of a local tribunal, and any person authorized by the Minister of Militia and Defence, may appeal against any such decision.

(2) If the two members of a local tribunal cannot agree as to any decision to be made by them, they shall forthwith state in writing the case to be decided and cause the statement to be sent to the Registrar for the province in which the tribunal is established.

(3)

(a) Subject to the provisions of paragraph (b) of this subsection there shall be an appeal from any appeal tribunal to the Central Appeal Judge.

(b) The Governor in Council, on the recommendation of the Central Appeal Judge, may make regulations governing the right to and fixing the conditions of appeal from an appeal tribunal to the Central Appeal Judge.

(4) The Central Appeal Judge shall be the tribunal of last resort, and the Governor in Council may, on his recommendation, appoint one or more other judges of any superior court to assist the said Central Appeal Judge in the discharge of his duties, and define their powers.

## EXEMPTIONS

11. (1) At any time before a date to be fixed in the proclamation mentioned in section four, an application may be made, by or in respect of any man in the class of

subclass called out by such proclamation, to a local tribunal established in the province in which such man ordinarily resides, for a certificate of exemption on any of the following grounds:-

- (a) That it is expedient in the national interest that the man should, instead of being employed in military service, be engaged in other work in which he is habitually engaged;
- (b) That it is expedient in the national interest that the man should, instead of being employed in military service, be engaged in other work in which he wished to be engaged and for which he has special qualifications;
- (c) That it is expedient in the national interest that, instead of being employed in military service, he should continue to be educated or trained for any work for which he is then being educated or trained;
- (d) That serious hardship would ensue, if the man were placed on active service, owing to his exceptional financial or business obligations or domestic position;
- (e) Ill health or infirmity;
- (f) That he conscientiously objects to the undertaking of combatant service and is prohibited from so doing by the tenets and articles of faith, in effect on the sixth day of July, 1917, of any organized religious denomination existing and well recognized in Canada at such date, and to which he in good faith belongs; and if any of the grounds of such application be established, a certificate of exemption shall be granted to such man.

(2)

- (a) A certificate may be conditional as to time or otherwise, and, if granted solely on conscientious grounds, shall state that such exemption is from combatant service only.
- (b) A certificate granted on the ground of the continuance of education or training, or on the ground of exceptional financial or business obligations or domestic position, shall be a conditional certificate only.
- (c) No certificate shall be conditional upon a person to whom it is granted continuing in or entering in to employment under any specified employer or in any specified place or establishment.
- (d) A certificate may transfer man to the class next in numerical order.



(e) When a conditional certificate is granted the conditions shall be stated on the certificate.

(f) It shall be the duty of any man holding a conditional certificate within three days after the condition stated therein cease to exist or after his exemption terminated, to give notice in writing of such fact to the Registrar of the province in which he ordinarily resides; and if he fails without reasonable excuse to do so, he shall be guilty of an offence and liable on summary conviction to a penalty not exceeding two hundred and fifty dollars.

(3)

(a) Subject to such conditions as to application and notice as may be provided by regulations, and subject also to paragraph (b) of this subsection, a certificate may, during the currency thereof, be renewed, varied or withdrawn at any time by the local tribunal issuing the same.

(b) Where a decision of a local or appeal tribunal has been varied on appeal to a n appeal tribunal or to the Central Appeal Judge, a certificate granted upon such variation shall thereafter, subject to such conditions as to application and notice as my be provided by regulations, be renewed, varied or withdrawn, but only during the currency thereof and only by the appeal tribunal or judge who granted the certificate.

(4) Any person who, for the pursue of obtaining a certificate or a condition in a certificate for himself or for any other person, or for the purpose of obtaining the renewal, variation or withdrawal of a certificate, makes any false statement or representation, shall be guilty of an offence and liable on summary conviction to imprisonment for any term not exceeding twelve months with or without hard labour.

(5)

(a) Any man who, having applied to any local tribunal for the issue to him of a certificate, applies without the leave of the Minister to any other local tribunal for a certificate, and any person who, knowing or having reason to believe that no application for a certificate had been made or is being made by or in respect of a man to a local tribunal, makes or aids or abets in the making or establishing of an application without such leave by or in respect of such man to another local tribunal, shall be guilty of an offence, and shall be liable on summary conviction to a penalty of not less than one hundred dollars and not more than one thousand dollars.

(b) All applications and all proceedings taken on applications for certificates, made without the leave of the Minister, by or in respect of a man before a local tribunal other than the local tribunal before which the first application by or in respect of such man was made, shall be null and void.

(c) Notwithstanding anything in this section contained, the Governor in Council may by regulations abolish any local tribunal, and transfer its duties and powers to any other local tribunal.

(6) Any person who alters or tampers with a certificate or, for the purpose of evading this Act, falsely represents himself to be a person to whom a certificate has been granted, or, if granted a certificate allows, for like purpose, any other person to have possession thereof, shall be guilty of an offence and liable on summary conviction to imprisonment for any term not exceeding six months.

(7) When a certificate is lost, destroyed or defaced, the tribunal by whom it was granted shall, upon the application of them and to whom it was granted and upon payment of a fee of fifty cents, issue to him a duplicate of such certificate.

## REGULATIONS

12. (1) The Governor in Council may make regulations to secure the full, effective and expeditious operation and enforcement of this Act, and in particular, but not to limit the generality of the foregoing, may,-

- (a) define the duties of Registrars and fix their remuneration;
- (b) authorize officers and tribunals to give directions not inconsistent with this Act;
- (c) on the recommendation of the Central Appeal Judge prescribe the conditions as to time or otherwise under which applications for certificates may be made, deferred applications received, appeals entered and heard and re-hearings had, and prescribe forms;
- (d) prescribe for the keeping and transmission of record;
- (e) appoint such peace officers or other officers and give them such powers and impose on them such duties as may be deemed necessary;
- (f) make provision for expenses and the remuneration of officers;
- (g) prescribe penalties for peace officers or other officers appointed under the authority of this Act, who are convicted of neglect or refusal to perform duty without reasonable excuse.

(2) All proclamations and regulations shall be published forthwith in the Canada Gazette and in such other manner, if any, as the Governor in Council may think necessary to ensure knowledge thereof by all persons concerned, and shall forthwith

be laid before Parliament if then in session and if not in session within ten days after the next meeting thereof.

(3) All regulations shall have the same force and effect as if they formed part of this Act.

## GENERAL PROVISIONS

13. (1) The Militia Act, the Army Act, and the King's Regulations and Orders for the Army, shall, so far as not inconsistent therewith, apply to and form part of this Act.

(2) Section twelve, and subsection two of section forty, and the proviso to section forty-five, of the Militia Act, shall not apply to men liable to be called out under this Act.

(3) The Minister of the Militia and Defence may transfer to the Naval Service any man who has reported for duty under the provisions of this Act.

(4) Unless further authorized by Parliament the reinforcements provided under this Act shall not exceed one hundred thousand men.

(5) Nothing in this Act contained shall be held to limit or affect the punishment provided by any other Act or law for the offence of assisting the enemy not the powers of the Governor in Council under The War Measures Act, 1914.

14. If in any prosecution under this Act any question shall arise in respect of the matters hereinafter mentioned, the burden of proof shall be upon the person charged to establish by satisfactory evidence,-

(a) that he does not come within any specified class called out;

(b) that he has duly reported in accordance with section four;

(c) that he comes within any of the exceptions set out in the Schedule hereto;

(d) that he has been duly exempted under section eleven.

And in the absence of such evidence the contrary shall be conclusively presumed.

15. (1) Every man within the classes described in section three shall, after his class or subclass is required to report, as provided in section four, whenever required by a peace officer or by any person who has authority for the purpose, produce his certificate if he has one, and shall answer truthfully all inquiries bearing on the question of his compliance or non-compliance with any provision of this Act.

(2) Any such man who fails to comply with this section shall, in respect of each failure, be guilty of an offence, and liable on summary conviction to a penalty not exceeding one hundred dollars or to imprisonment for term not exceeding one year.

16. (1) Any person who comes within any of the classes set out in section three, and who contravenes any of the provisions of this Act or of regulations for which contravention no other penalty is herein provided, shall be guilty of an offence, and shall be liable upon summary conviction to a penalty is herein provided, shall be guilty of an offence, and shall be liable upon summary conviction to a penalty of not less than ten dollars nor more than five hundred dollars, or to imprisonment for a term not exceeding twelve months, or to both fine and imprisonment.

(2) Any person who by means of any written or printed communication, publication or article, or by any oral communication or by any public speech or utterance,-

(a) advises or urges that men described in section three shall contravene this Act or regulations; or,

(b) wilfully resists or impedes, or attempts wilfully to resist or impede, or persuades or induces or attempts to persuade or induce any person or class or persons to resist or impede the operation or enforcement of this Act; or,

(c) for the purpose of resisting or impeding the enforcement or operation of this Act, persuades or induces or attempts to persuade or induce any person or class of persons to refrain from making applications for Certificates of Exemption or submitting evidence in respect thereof; shall be guilty of an offence, and shall be liable upon indictment or upon summary conviction to imprisonment for a term not less than one year nor more than five years.

(3) Any newspaper, book, periodical, pamphlet or printed publication containing matter prohibited by subsection two of this section may, whether the printer or publisher thereof be previously convicted or not, be summarily suppressed and further printing or publication thereof and of any future issue of a newspaper or periodical which has contained such matter may be prohibited for any term not exceeding the duration of the present war: Provided no action shall be taken under this subsection or under subsection two of this section without the approval of the Central Appeal Judge.

(4) No conviction in a court of criminal jurisdiction for an offence against this Act, or the regulations made thereunder, shall be had, unless the prosecution has been consented to or approved by the Attorney General of Canada.

17. All expenditure under or for the purposes of this Act shall be paid out of such moneys as Parliament may appropriate for the purpose.

## SCHEDULE

### EXCEPTIONS

1. Men who hold a certificate granted under this Act and in force, other than a certificate of exemption from combatant service only.
2. Members of His Majesty's regular, or reserve, or auxiliary forces, as defined by the Army Act.
3. Members of the military forces raised by the Governments of any of His Majesty's other dominions or by the Government of India.
4. Men serving in the Royal Navy or in the Royal Marines, or in the Naval Service of Canada, and members of the Canadian Expeditionary Force.
5. Men who have since August 4th, 1914, served in the Military or Naval Forces of Great Britain or her allies in any theatre of actual war and have been honourably discharged therefrom.
6. Clergy, including members of any recognized order of an exclusively religious character, and ministers of all religious denominations existing in Canada at the date of the passing of this Act.
7. Those persons exempted from Military Service by Order in Council of August 13th, 1873, and by Order in Council of December 6th, 1898.

*The Military Service Act, 1917, Statutes of Canada 1917, c. 19.*